

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**)
)
)
 Plaintiff,)
)
 v.)
)
DWAYNE M. SIBETANG,)
)
 Defendant.)
_____)

Crim. Case No. 00-0164D

**ORDER GRANTING, IN PART,
PETITION FOR VOLUNTARY
PSYCHIATRIC TREATMENT
AND MOTION TO DETERMINE
COMPETENCY**

This matter came before the court on March 23, 2000 in courtroom 217A on Defendant Dwayne Sibetang’s Petition for Voluntary Psychiatric Treatment (the “Petition”) and Motion for Competency Determination (the “Motion”). Robert T. Torres, Esq. appeared on behalf of the Defendant, and James J. Benedetto, Esq. appeared on behalf of the Government. The court, having reviewed the pleadings, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

I. BACKGROUND

1. On March 17, 2000, the Defendant was arrested on a complaint for probable cause in connection with a March 16, 2000 stabbing incident at COCO Garden in Capitol Hill. The declaration of probable cause asserts that the Defendant, while armed with a dangerous [p. 2] weapon, killed Dong Che Ma and wounded Xing Fan Li during the perpetration or attempted perpetration of a burglary and/or robbery.¹
2. On March 22, 2000, the Defendant filed his Petition and Motion, requesting prompt psychiatric care and treatment for a minimal period of fourteen (14) days and leave to continue treatment at the Division of Mental Health. Defendant also seeks an order for a

¹ On March 23, 2000, the government filed an Information charging the Defendant with one count of first degree murder, one count of second degree murder, two counts of assault with a dangerous weapon, and one count of burglary.

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psychiatric competency evaluation to determine whether the Defendant lacks capacity to assist in his own defense or understand the nature of the criminal proceedings pending against him.

3. At the hearing on this matter, Defendant sought leave to continue treatment at the Division of Mental Health at which he was presently receiving medication. Defendant contended that the current conditions of his pretrial incarceration, in which he has been placed in isolation and lockdown and restricted from access to visitors, violates CNMI and federal law.² In response, the Government argued that CHC and the Division of Mental Health may not have a facility suitable for accommodating the Defendant and opposed, at the present time, treatment at any location other than where the Defendant is currently being detained.
4. With regard to the Motion for Competency Evaluation, Defendant asks the court to enter an order for a psychiatric competency evaluation to determine whether the Defendant is competent to stand trial. The Government does not contest the request but suggests that the court appoint the Defendant's prior therapist to undertake the evaluation. Defendant [p. 3] opposes the appointment of his prior therapist and requests, instead, that the court appoint another expert.

ORDER

The Court ORDERS as follows:

1. Based on the state of the record, the court finds there is insufficient information to determine Defendant's rights to treatment at a facility other than where he is currently located, as well as the conditions or terms of that treatment. Accordingly, the court finds that at present, the

² At the hearing on this matter, counsel for Defendant did not explicitly reference any particular statute or constitutional provision. The court notes, however, that in addition to any rights and protections that may be guaranteed to the Defendant under the CNMI Constitution and Federal law, the law of the Commonwealth may also provide for certain protections pursuant to the Involuntary Criminal Commitment Act of 1993, P L 8-37, §§3(g)(defining the rights of persons committed pursuant to the Act while in the care, custody or control of an evaluation or treatment facility), 3(c),(defining "evaluation facility" to include a correctional institution or facility or jail), and 3(h)(defining "treatment facility" to include correctional institution or facility or jail, and the Patient's Rights Act P L 8-36, enumerating certain rights afforded to every person receiving evaluation, assessment, care or treatment at an evaluation or treatment facility, whether voluntarily or involuntarily.

interests of public safety require that the Defendant be provided with such medication, care, and treatment as may be required at the location where he is currently being detained.

2. Pursuant to 6 CMC § 6604 and § 6606, the court GRANTS the motion for competency determination and will appoint a psychiatrist or other expert to examine the Defendant and report upon his mental condition. The court further ORDERS the parties to designate and submit their designation of an expert to the court no later than five (5) days following the date of this order. Should the parties be unable to agree upon an expert, then the court will appoint one following a hearing on this matter.
3. The court-appointed expert shall have reasonable access to the Defendant for the purposes of examination and, pursuant to 6 CMC § 6604, the Commonwealth shall bear the costs of payment of reasonable fees and traveling expenses. Pursuant to 6 CMC § 6606, the court further suspends all proceedings in this matter until the question of competency has been resolved.
4. Consistent with its rulings at the hearing on this matter, the court further directs the parties to file appropriate motions on an expedited basis in order to address the Defendant's rights to treatment at a facility other than where he is currently located as well as the conditions or terms of that treatment.
5. This matter is continued to April 12, 2000 at 1:30 p.m. to confirm the identity of the competency evaluator and update the court on the status of the evaluation. **[p. 4]**

So ORDERED this 30 day of March, 2000.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge